



Notice of Availability of Guidance and Application for Hydroelectric Incentive Program

AGENCY: Water Power Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability of guidance and open application period.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of updated guidance for the Energy Policy Act of 2005 program. The guidance describes the hydroelectric incentive payment requirements and explains the type of information that owners or authorized operators of qualified hydroelectric facilities must provide DOE when applying for hydroelectric incentive payments. The hydroelectric incentive payments are a benefit available for electric energy generated and sold for a specified 10-year period as authorized under the Energy Policy Act of 2005. In Congressional appropriations for Federal fiscal year 2021, DOE received funds to support this hydroelectric incentive program. At this time, DOE is only accepting applications from owners and authorized operators of qualified hydroelectric facilities for hydroelectricity generated and sold in calendar year 2020.

DATES: DOE is currently accepting applications from [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] through [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Applications must be sent to hydroincentive@ee.doe.gov by midnight EDT, [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], or they will not be considered timely filed for calendar year 2020 incentive payments.

ADDRESSES:

Interested parties are to submit applications electronically to hydroincentive@ee.doe.gov. DOE's December 2021 Guidance is available at: <https://www.energy.gov/eere/water/water-power-funding-opportunities>.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Mr. Corey Vezina, U.S. Department of Energy, Golden Field Office, 15013 Denver West Parkway, Golden, CO 80401,

(240) 562-1382 or by email at hydroincentive@ee.doe.gov. Further instruction can be found in the December 2021 Guidance posted at <https://www.energy.gov/eere/water/water-power-funding-opportunities>. *Electronic communications are recommended for correspondence and required for submission of application information.*

SUPPLEMENTARY INFORMATION: In section 242 of the Energy Policy Act of 2005 (EPAc 2005; Pub. L. 109–58), as amended by section 3005(a) of the Energy Act of 2020 (Energy Act 2020; Pub. L. 116-260), Congress established a program to support the expansion of hydropower energy development at existing dams and impoundments through an incentive payment procedure for eligible facilities (section 242), codified at 42 U.S.C. 15881. Congress amended section 242 in the Energy Act of 2020 (Pub. L. 116-260) by expanding the eligibility window and amending the definition of a qualified hydroelectric facility. The Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58) made further amendments to section 242.

Section 242 directs the Secretary to provide incentive payments to the owners or authorized operators of hydroelectric generation facilities in accordance with specific statutory instructions. The Secretary is directed to issue incentive payments, subject to the availability of appropriations, for hydroelectric energy generated and sold by a qualified hydroelectric facility during the incentive period. Incentive payments may only be made upon receipt by the Secretary of an incentive payment application that demonstrates that the applicant is eligible to receive such payment and satisfies other requirements as the Secretary deems necessary (42 U.S.C. 15881(a)). In FY 2021, Congress appropriated to DOE \$7,000,000 for this purpose.

The Secretary may only issue payments for the electric energy generated and sold by a qualified hydroelectric facility that began operations during the period of 22 fiscal years beginning after the first fiscal year occurring after the program’s enactment, August 8, 2005 (42 U.S.C. 15881(c)). A qualified hydroelectric facility may receive payments for a period of 10 consecutive fiscal years, known as the incentive period, which begins with the fiscal year that electric energy generated from the facility is first eligible for such payments (42 U.S.C. 15881(d)). Payments made by the Secretary are to be based on the

number of kilowatt hours of hydroelectric energy generated by the facility during the incentive period. The amount of such payment shall be 1.8 cents per kilowatt hour (as adjusted by the Internal Revenue Code of 1986), subject to the availability of appropriations, except that no facility may receive more than \$1,000,000 in one calendar year (42 U.S.C. 15881(e)). No payments will be made after the expiration of the period of 32 fiscal years beginning with the first full fiscal year occurring after August 8, 2005, and no payment may be made under this section to any such facility after a payment has been made with respect to such facility for a period of 10 fiscal years (42 U.S.C. 15881(f)). The Secretary is authorized to carry out the purposes of this program for each of the fiscal years of 2021 through 2036 (42 U.S.C. 15881(g))

In section 242, Congress defines a qualified hydroelectric facility to mean “a turbine or other generating device owned or solely operated by a non-Federal entity – (A) that generates hydroelectric energy for sale; and (B)(i) that is added to an existing dam or conduit; or (ii)(I) that has generating capacity of not more than 20 megawatts; (II) for which the non-Federal entity has received a construction authorization from the Federal Energy Regulatory Commission, if applicable; and (III) that is constructed in an area in which there is inadequate electric service, as determined by the Secretary, including by taking into consideration – (aa) access to the electric grid; (bb) the frequency of electric outages; or (cc) the affordability of electricity” (42 U.S.C. 15881(b)(1))

Additionally, Congress defined an existing dam or conduit to mean any dam or conduit constructed and completed before August 8, 2005 and does not require any construction or enlargement of impoundment or diversion structures, other than repair or reconstruction, in connection with the installation of a turbine or other generating device (42 U.S.C. 15881(b)(2)) The term conduit maintains the same meaning here as when used in section 30(a)(2) of the Federal Power Act (16 U.S.C. 823a(a)(3)(A)) (42 U.S.C. 15881(b)(3))

Further, these defined terms apply without regard to the hydroelectric kilowatt capacity of the facility, without regard to whether the facility uses a dam owned by a governmental or nongovernmental entity, and without regard to whether the facility begins operation on or after the date August 8, 2005

(42 U.S.C. 15881(b))

Recently DOE made updates to clarify its Guidance for the Energy Policy Act of 2005 section 242 program. The December 2021 Guidance is available at: <https://www.energy.gov/eere/water/water-power-funding-opportunities>. Each application will be reviewed based on the Guidance. The updates made to the Guidance involve edits to clarify the definition of existing and new terms, eligibility window and incentive period, incentive payment calculations, application content requirements, and the duration of payments available to generation facilities.

DOE notes that applicants that received incentive payments for prior calendar years must submit a new and complete application addressing all eligibility requirements for hydroelectricity generated and sold in calendar year 2020. DOE will not consider previously submitted application materials.

Applications that refer to previous application materials or statements in lieu of submitting current information will not be considered. As authorized under section 242 of EPAct 2005, and as explained in the Guidance, DOE also notes that it will only accept applications from qualified hydroelectric facilities that began operations at an existing dam or conduit between October 1, 2005, and September 30, 2027.

When submitting information to DOE for the section 242 program, it is recommended that applicants carefully read and review the completed content of the Guidance for this process. When reviewing applications, DOE may corroborate the information provided with information that DOE finds through FERC e-filings, contact with power off-taker, and other due diligence measure carried out by reviewing officials. DOE may require the applicant to conduct and submit an independent audit at its own expense, or DOE may conduct an audit to verify the number of kilowatt-hours claimed to have been generated and sold by the qualified hydroelectric facility and for which an incentive payment has been requested or made.

Signing Authority

This document of the Department of Energy was signed on December 15, 2021, by Jennifer Garson, Acting Director, Water Power Technologies Office, pursuant to delegated authority from the Secretary

of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC on December 20, 2021.

Treena V. Garrett,
Federal Register Liaison Officer,
U.S. Department of Energy.

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